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MESSAGE

OF

THE GOVERNOR.

READ—JANUARY 12, 1852.

To the Senate of Pennsylvania:

SENATORS:—An act entitled "An Act to repeal the sixth section of an act, entitled 'An Act to prevent kidnapping and preserve the public peace, prohibit the exercise of certain powers hererofore exercised by judges, justices of the peace and jailors of this Commonwealth, and to repeal certain slave laws,'" has been held under advisement, since the adjournment of the last Legislature.

In obedience to the provisions of the constitution, I return this bill to the Senate where it originated, without my approval, and with my reasons for withholding it. To those reasons, founded on the clearest sense of duty, and of official responsibility, I invite your candid attention. They are now for the first time given, because now, for the first time since the passage of this act, has an opportunity offered to confer with those to whom my reasons may be important, and with whom they may be operative. The section proposed to be repealed, is in these words: "It shall not be lawful to use any jail or prison of this Commonwealth for the detention of any person claimed as a fugitive from servitude or labor, except in cases where jurisdiction may lawfully be taken by any judge, under the provisions of this act; and any jailor, or keeper of any prison, or other person, who shall offend against the provisions of this section, shall, on conviction thereof, pay a fine of five hundred dollars, one-half thereof for the use of the Commonwealth, and the other half to the person who prosecutes; and shall, moreover, thenceforth be removed from office, and be incapable of holding such office of jailor, or keeper of a prison, at any time during his natural life." It is part of a law, passed in the year 1847, under the executive administration of my predecessor, and by votes unanimous, or nearly so, of both branches of the Legislature. The bill under consideration, is confined to the repeal of the section prohibiting the use of our prisons, as places of detention, for fugitives from labor. If the legislation proposed, authorizes the use of the prisons, it is in repugnance to the Constitution of the United States, as expounded by the Supreme Court. By a decision made in derogation of the local statutes of Pennsylvania, the Supreme Court of the United States held, in so many words, that all State legislation on the subject of the reclamation of fugitives from labor, whether to obstruct or to aid it, to hinder or promote it, is absolutely and entirely prohibited. The legislation of Congress supersedes all State legislation on the subject, and by necessary implication prohibits it.

The State cannot enact auxiliary provision on the subject. This is the very language. If, therefore, an act of Assembly were passed authorizing the several county

commissioners to erect safe houses of detention for persons claimed as fugitives from labor, under such regulations as the Legislature, or its agents might prescribe, for the reception and safe-keeping of the inmates, such a law would be unconstitutional and consequently void, and any single discontented citizen of a county might have it so declared. I am unable to see any difference in this respect between the special construction of such places of detention regulated and controlled by State authority and State agents, and the permission to use those already erected, and regulated by general laws. It is the State law interfering in the question of the alleged fugitive, and his claimant, and such laws the Supreme Court of the United States have pronounced unconstitutional. It is not the legislation of Pennsylvania that has closed our jails against the reception of such fugitives, but a formal decision of the Supreme Court declaring our former statute on this subject unconstitutional, a decision which until reversed, is binding on every department of this government.

Nor were the certain consequences of this doctrine thus solemnly adjudicated unforeseen. The present Chief Justice of the United States (an eminent jurist and a citizen of the State of Maryland), in dissenting from the opinion of the court, expressed his belief that these very effects would be produced, and foretold the time when State agency being repudiated, and State prisons closed by this very decision, "the territory of the neighboring States would become open pathways for fugitives from labor." These are his words, and they conclusively show in what light he understood the judgment thus pronounced. I am aware it has been alleged that the point herein mentioned as decided did not arise in the case. It is answered that the judges of the court in their several opinions declared otherwise.

The Chief Justice, who was present and took part in the hearing, and whose dissenting opinion furnishes his views of what was decided, says: "But, as I understand the opinion of the court, it goes further and decides that the power to provide a remedy for this right is exclusively vested in Congress, and that all laws upon the subject by a State, since the adoption of the Constitution, are null and void."

Justice Wayne says: "In that opinion it is decided, third, that the legislation by Congress upon the provision, as the supreme law of the land, excludes all State legislation upon the same subject, and that no State can pass any law or regulation, or interpose such as may have been law or regulation when the Constitution of the United States was ratified, to superadd, to control, qualify, or impede a remedy enacted by Congress for the delivery of fugitive slaves;" then adds, after a learned argument sustaining this view: "I consider the point I have been maintaining more important than any other in the opinion of the court," alleging, as confirmation, that this was a point decided: that only three of the nine judges, composing the court, dissented.

Justice McLean makes the inquiry, "Does the provision in regard to the reclamation of fugitive slaves vest the power exclusively in Congress?" and answers: "The nature of the power shows that it must be exclusive. It is contended that the power to execute it rests with the States. The law was designed to protect the rights of the slave holder against the States opposed to those rights, and yet by this argument the effective power is in the hands of those on whom it is to operate. It is essential, therefore, to the uniform efficacy of this constitutional provision, that it should be considered exclusively a federal power."

This judgment of the Supreme Court of the United States determines the law for my guidance and for yours, whatever may be our individual convictions upon the subject. If, then, a prison cannot be built, under State laws, for the detention of fugitives—if a prison already built, and subject to State regulations and rules, respecting its inmates, cannot be used—and if, in short, all State legislation of whatever kind is prohibited by a solemn decree of the Supreme Court—is it not worse than idle to pass an act restorative of laws, thus expressly declared, and known in advance to be unconstitutional. The writ of habeas corpus would run into these unconstitutional places of detention; the federal judiciary would themselves have to decide the question. The State judges in counties, where there is no United States judge, and where the fugitive is committed by a mere commissioner, would

be required to issue the writ of right, and that which the friends of this repeal have claimed as a great boon to the claimants, would be worse than a mockery. The claim he now has on the marshal and his sureties for indemnification for the escape of his servant, would be converted into a barren claim against a county jailor, whose first duty would be to discharge a prisoner thus held, if he claimed his liberty. Not so was the law formerly, and before it was decided that all State legislation on the subject is prohibited. Not so will it be hereafter, if the principle of the decision of the Supreme Court be practically carried out, and this whole vexed and vexatious subject be left to the administration of the United States officers.

The act of Congress of the 18th September, 1850, commonly known as the Fugitive Slave Bill, would seem to favor the same views entertained by Judge Story, and pronounced in the decision to which reference has been made. Its whole tenor shows this, and more than one of the detailed provisions confirm it. The custody of the fugitive by State authority is almost forbidden.

The marshal and his sureties are made subject to a pecuniary liability for an escape, which, as the Supreme Court of the United States have decided, in a precisely an analagous case, is defeated the instant the prisoner is transferred to a local jail.

In counties where there is no marshal, the agent of the commissioner is charged with the exclusive custody of the fugitive, and is allowed by the 8th section his expenses for keeping him in custody and providing him with food, and lodging, during his detention.

Surely no one can pretend to say that this is not a full and exclusive exercise of federal power on the subject. If so, the principle of constitutional law to which I have referred, is interposed, and the legislation of a State to transfer this custody to a local prison is prohibited. Is it not, then, most conducive to peace and good order, and the harmonious administration of the law, that this whole subject be left where the constitution places it, in the hands of the United States authorities.

I have thus frankly stated to the Senate my reasons for withholding my approval of this bill. I have limited them strictly,—guarding myself against any expression liable to misconstruction, to considerations of constitutional law. I ask for them a candid and careful consideration.

WM. F. JOHNSTON.

EXECUTIVE CHAMBER,
Harrisburg, January 8, 1852.

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Office of the Pennsylvania Rail Road Company,

Philadelphia, September 1, 1851.

The papers pertaining to the suit of Hays and others vs. The Pennsylvania Rail Road Company, recently dismissed by the Supreme Court of Pennsylvania, are herewith submitted to the Stockholders.

They will fully explain the origin, nature and importance of the controversy.

By order of the Board.

W. C. PATTERSON,

President.